

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

UNITED STATES OF AMERICA,

Plaintiff,

v.

TIMOTHY W. BURKE,

Defendant .

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Criminal No. 02-315 (SRC)

OPINION & ORDER

CHESLER, District Judge

This matter comes before the Court upon the motion by Defendant pro se Timothy W. Burke (“Defendant”) for an Order of early termination of his supervised release [docket entry 51]. On September 10, 2003 Defendant was sentenced to a term of imprisonment of 60 months, followed by a three-year term of supervised release, based upon his guilty plea to a one-count indictment charging him with conspiracy to commit equity skimming and mail fraud in violation of 18 U.S.C. § § 1341 and 371 and 12 U.S.C. § 1709-2. Defendant began serving his term of supervised release on August 23, 2007. He now brings this motion to terminate the supervised release approximately one year before it is due to expire per his criminal sentence. Plaintiff, the United States of America (the “Government”) has opposed this motion.

The Court has authority to terminate a term of supervised release pursuant to 18 U.S.C. § 3583(e)(1). That provision states, in relevant part, that the Court may “terminate a term of supervised release and discharge the defendant released at any time after the expiration of one

year of supervised release . . . if it is satisfied that such action is warranted by the conduct of the defendant released and the interest of justice.” The statute directs that the Court consider various factors in making this determination. Id. They are:

- (1) the nature and circumstances of the offense and the history and characteristics of the defendant;
- (2) whether the sentence has provided adequate deterrence to criminal conduct;
- (3) the need to protect the public from further crimes of the defendant; and
- (4) providing the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner;
- (5) the sentencing range applicable to the defendant;
- (6) any pertinent policy statement by the Sentencing Commission;
- (7) the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct; and
- (8) the need to provide restitution to any victims of the offense.

18 U.S.C. § 3553 (a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6) and (a)(7).

The Court has considered the papers submitted by the parties and the applicability of these factors to Defendant. It finds, in its discretion, that the relief sought by Defendant is warranted. Defendant has served two of his three years of supervised release, and thus is eligible under 18 U.S.C. § 3583(e)(1) for early termination of supervised release. Defendant has advised the Court that he seeks early termination based on his good behavior on supervised release thus far and for the purpose of relocating with his mentally ill son to Ireland in an effort to remove him from an environment Defendant feels worsens the drug and alcohol addictions his son

battles. Though the Government argues that, contrary to Defendant's assertions, he has not been a "model probationer," the three instances of non-compliance with the terms of his supervised release appear to have been extraordinarily minor and unintentional infractions, which Defendant immediately rectified in cooperation with his probation officer.

Accordingly, **IT IS** on this 21st day of August, 2009,

ORDERED that, pursuant to 18 U.S.C. § 3853(e)(1), Defendant's motion for early termination of supervised release [docket entry 51] be and hereby is **GRANTED**; and it is further

ORDERED that Defendant's term of supervised release, ordered in his judgment of conviction entered on September 10, 2003 in the above-captioned docket number, shall expire on August 22, 2009.

s/Stanley R. Chesler
STANLEY R. CHESLER
United States District Judge